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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of the Commission's)
Rules Regarding Installment)
Payment Financing For Personal)
Communications Services (PCS))
Licensees)
)
Amendment of Part I of the)
Commission's Rules --)
Competitive Bidding Proceeding)

WT Docket No. 97-82

REPLY TO OPPOSITIONS TO
PETITIONS FOR RECONSIDERATION

Eldorado Communications, L.L.C. ("Eldorado") by its attorney and pursuant to section 1.429(a) of the Commission's rules, 47 C.F.R. §1.429(a), hereby replies to the oppositions to the petitions for reconsideration filed in the captioned proceeding.^{1/} Specifically, we focus on one single issue -- that the restructuring relief to C Block licensees provided by the Commission through its Restructuring Order be extended to F Block licensees.

I. Eldorado's Interest

Eldorado is the Block F licensee in the Houghton, Michigan Basic Trading Areas ("BTA"). Eldorado is also a bona fide designated entity ("DE"). It has made all required payments to the Commission on time and in full. Eldorado was licensed on April 28,

^{1/} Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications Services (PCS) Licenses, Second Report and Order, WT Docket No. 97-82, FCC 97-342, 12 FCC Rcd 16436 (1997) ("Restructuring Order").

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1997. Accordingly, it is an interested party in the restructuring proceeding.

**II. The Petitioners in This Proceeding Agree That
Relief Should be Extended to F-Block Licensees**

With the exception of Americall International, L.L.C. ("Americall"), no party took issue with extending to F-Block licensees the restructuring relief provided to C-Block licensees. In contrast, CONXUS Communications, Inc. ("CONXUS"), Polycell Communications, Inc. ("Polycell"), and Omnipoint Corporation ("Omnipoint") all supported it. While we appreciate that the C-Block licensees experience unique and critical problems, the F-Block licensees face at least two problems which serve to off set the special C-Block disadvantages. First, is the timing of their grants. Second is the spectrum (i.e., 10 vs. 30) assigned each license.

More importantly, the reason that both C and F-Block licensees should all be treated the same is that they have certain overwhelming commonalities. The C and F-Block licensees were both allotted frequency blocks pursuant to Congressional mandates that the Commission provide special assistance to small businesses; they both share the position as debtor to the Commission in an era where the Commission wants to depart from its role as banker; and they both utilized bidding credits which had the effect of increasing the nominal bid prices, which could be corrected by application of Net Present Value analysis.

CONXUS in its Comments on Petitions for Reconsideration (the

"CONXUS Comments"), properly observes that "licensees in the C and F blocks are in comparable situations,. . .[i]n fairness the, C block relief options which would be applicable to F block licensees should apply to them". CONXUS Comments, at 5. This is only logical since both are competing for the same capital and the same customers. Polycell, both a C and F-Block licensee urges that affording the same restructuring options to F-Block licensees would "ensure proportional fairness to all entities meeting the definition of a small business under the Commission's rules". Polycell's Reply Comments on Petitions for Reconsideration, at 10. Omnipoint, an entity who has been vocal in urging caution in revising any of the restructuring options adopted last October also pointed clearly to the inconsistent treatment accorded C and F-Block licensees. See, Omnipoint's Opposition to and Comments in Support of Petitions for Reconsideration and Clarification, at 11-12, where Omnipoint "agrees with Central Oregon Cellular that the Commission's observation that the difficulties faced by C-Block licensees versus the F-Block licensees 'appear to be different' is arbitrary and capricious". Id.

The Commission's disparate treatment of C and F-Block licensees has not, and cannot, be justified. The Commission has not complied with its obligation to "examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice

made.'"^{2/} Nor has it met its obligation to assure that "all the relevant factors and available alternatives were given adequate consideration".^{3/} Rather, the Commission's action is arbitrary and capricious because the Commission provided no reasoned basis as to why the Commission "concluded" what it did. Thus, it includes only a "mere collection of conclusory comments" that cannot support the Commission's action.^{4/}

The Commission also failed to justify why it treated differently two groups of DE licensees. The mere statement that one paid more than another, or that their problems "appear to be different" cannot justify different treatment. See, Melody Music, Inc. v. FCC, 345 F.2d 730, 733 (D.C. Cir. 1965), where Chief Judge Bazelon chastised the FCC for treating two similarly situated applicants completely differently, especially when both "were considered by the Commission at virtually the same time". There he warned the FCC that, "[W]hatever action the Commission takes on remand, it must explain its reasons...[and] the relevance of those differences to the purposes of the Communications Act". Id.

^{2/} Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co., 463 U.S. 29, 43 (1983) (quoting Burlington Truck Lines, Inc. v. United States, 371 U.S. 156, 168 (1962)).

^{3/} Office of Communications of United Church of Christ v. FCC, 707 F.2d 1413, 1426 (D.C. Cir. 1983) ("Church of Christ").

^{4/} See, West Michigan Telecasters, Inc. v. F.C.C., 396 F.2d 688, 691 (D.C. Cir. 1968).

III. Conclusion

In view of the above, Eldorado urges the Commission to reconsider its Restructuring Order as set forth herein.

Respectfully submitted,

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January 14, 1998

CERTIFICATE OF SERVICE

I, Jennifer McCord, hereby certify that I have, on this 14th day of January 1998, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION to the following:

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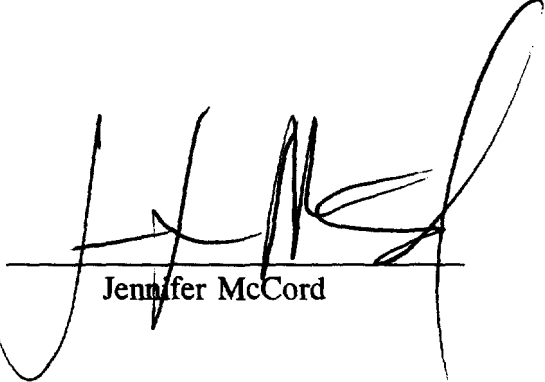
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